

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM F. HOSEL,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

Case No. C04-5537RUB

ORDER OVERRULING
PLAINTIFF'S
OBJECTIONS,
ADOPTING REPORT
AND
RECOMMENDATION OF
THE MAGISTRATE
JUDGE, AND
AFFIRMING FINAL
DECISION OF THE
COMMISSIONER OF
SOCIAL SECURITY
ADMINISTRATION

This matter comes before the court on review of the Report and Recommendation of the magistrate judge. Dkt. 19. The court has considered the Report and Recommendation, plaintiff's objections to the Report and Recommendation (Dkt. 20), and the remainder of the file herein.

On July 6, 2004, the Appeals Council denied plaintiff's request for review of a decision by the ALJ finding that plaintiff was not disabled. On August 27, 2004, plaintiff filed a complaint requesting review of the decision of the Administrative Law Judge (ALJ). Dkt. 1. On August 31, 2005, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, recommending that the court affirm the ALJ's decision of the Commissioner of Social Security. Dkt. 19. The Report and Recommendation concluded that the ALJ did not fail to fully and fairly develop the record; the ALJ properly assessed plaintiff's

1 credibility; and the ALJ did not err in assessing plaintiff's residual functional capacity. *Id.*

2 On September 8, 2005, plaintiff filed objections to the Report and Recommendation, arguing that
3 the ALJ failed to fully and fairly develop the record because (1) plaintiff's contention to the Appeals
4 counsel that he was experiencing seizures was sufficient to trigger the duty of the ALJ to further inquire
5 into possible impairment related to seizures; and (2) medical evidence describing possible seizures with a
6 pending neurology appointment was submitted to the Appeals Council before the ALJ's decision was
7 issued and triggered the duty to develop the record. Plaintiff has filed objections to the Report and
8 Recommendation. Defendant has no objection to the Report and Recommendation.

9 As discussed in the Report and Recommendation, plaintiff's statement on his request for review of
10 the ALJ's decision that he was having additional problems with seizures and his "Dr. is tryin[g] [to] [f]ind
11 out why", did not trigger the duty of the ALJ to further develop the record. See Dkt. 19, at 6. The court
12 concurs with the Magistrate Judge as to this issue.

13 The Magistrate Judge did not address plaintiff's claim in his objections that the medical evidence
14 submitted to the Appeals Council before the ALJ's decision had been issued triggered the duty of the ALJ
15 to further develop the record on the issues of plaintiff's report of seizures. The court has reviewed the
16 record. On August 12, 2004, plaintiff's counsel sent a letter to the Appeals Council, stating that (1) "Mr.
17 Hosel was being evaluated for a possible seizure disorder." Dkt. 11. Included with the letter was a note
18 from a Physician's Assistant (PA-C), stating the following:

19 Continues to have chronic lumbar back pain. Mobility minimally increased. TENS unit helps
20 mildly. Continues to do Physical Therapy home program. New concerns include bilateral feet and
21 leg pain, with possible recent seizure. He has a neurology appt. 1/21/04[.] He can stand for [less
than] 10 min at a time. At this time cannot work. He may need to be retained for a minimally
physical job.

22 Dkt. 11.

23 A Physician's Assistant is not an acceptable medical source for providing medical opinions in a
24 social security case. See 20 C.F.R. § 404.1513(a). Moreover, this note stated that plaintiff had a "possible
25 recent seizure"; the note does not indicate that plaintiff was being evaluated by a neurologist for a "possible
26 seizure disorder", as plaintiff's counsel suggested to the Appeals Council in his letter. This evidence, even
27 combined with plaintiff's report of problems with seizures, does not rise to a level that would trigger the
28 duty of the ALJ to develop the record regarding a seizure disorder. In particular, there has been no

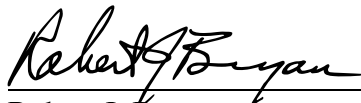
1 showing that any such possible seizures or seizure disorder has resulted in any work-related impairments.

2 The Report and Recommendation of the magistrate judge should be adopted, and the decision of
3 the Commissioner of the Social Security Administration should be affirmed.

4 Therefore, it is hereby **ORDERED** that plaintiff's objections are **OVERRULED**, and the Report
5 and Recommendation of the magistrate judge (Dkt. 19) is **ADOPTED**. The final decision of the
6 Commissioner of the Social Security Administration is **AFFIRMED**.

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
8 party appearing *pro se* at said party's last known address.

9 DATED this 23rd day of September, 2005.

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12 Robert J. Bryan
13 United States District Judge
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